

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Telco Connection LLC for
Registration as an Interexchange Carrier
Telephone Corporation Pursuant to the
Provisions of Public Utilities Code
Section 1013.

Application 12-07-015
(Filed July 23, 2012)

DECISION DISMISSING THE APPLICATION**1. Introduction**

The application of Telco Connection, LLC (Telco or Applicant), seeks authority to provide interexchange telephone services in California. The Consumer Protection and Safety Division (CPSD) protested the application. CPSD uncovered evidence that Applicant violated Rule 1.1 by providing false statements to the Commission concerning its regulatory history. CPSD further had doubts as to the fitness of Applicant's sole officer, David A. Singer. CPSD requested that the Commission hold an evidentiary hearing prior to considering the application. Subsequently, the parties entered into a Settlement Agreement whereby CPSD withdrew its protest and Applicant agreed to pay a fine of \$6,500. We reject the settlement and dismiss the application.

2. Background

Telco Connection, LLC (Telco or Applicant) is a California limited liability company incorporated on November 12, 2010. Applicant's sole officer, David A. Singer (Singer), was the founder and Chief Executive Officer of Advanced Tel, Inc., dba ATI (ATI), from March 1991 to August 2009. ATI is a

California company incorporated on August 17, 1995. ATI has been a registered telephone carrier in California since January 3, 2002. On March 31, 2006, Singer transferred 100% ownership interest in ATI to InterMetro Communications, Inc. (InterMetro), at which time ATI became a wholly-owned subsidiary of InterMetro, with Singer remaining president of ATI.

3. Bases of Protest

3.1. Rule 1.1 Violation

Applicant used the streamlined registration process provided for in Decision (D.) 10-09-017. In filling out the Application for Registration License form, Telco responded "True" to Question 8 that states:

Neither applicant, any of its affiliates, officers, directors partners, agents, or owners (directly or indirectly) of more than 10% of applicant, or anyone acting in a management capacity for applicant: (a) held one of these positions with a company that filed for bankruptcy; (b) been personally found liable, or held one of these positions with a company that has been found liable, for fraud, dishonesty, failure to disclose, or misrepresentations to consumers or others; (c) been convicted of a felony; (d) been (to his/her knowledge) the subject of a criminal referral by judge or public agency; (e) had a telecommunications license or operating authority denied, suspended, revoked, or limited in any jurisdiction; (f) personally entered into a settlement, or held one of these positions with a company that has entered into settlement of criminal or civil claims involving violations of sections 17000 et seq., 17200 et seq., or 17500 et seq. of the California Business & Professions Code, or of any other statute, regulation, or decisional law relating to fraud, dishonesty, failure to disclose, or misrepresentations to consumers or others; (g) been found to have violated any statute, law, or rule pertaining to public utilities or other regulated industries; or (h) entered into any settlement agreements or made any voluntary payments or agreed to any other type of monetary forfeitures in resolution of any action by any regulatory body, agency, or attorney general.

However, CPSD uncovered the following information contrary to Applicant's assertion:

- On August 15, 2006, the Florida Public Service Commission ordered ATI to pay a penalty and cost of collection, together totaling \$500, and any past due Regulatory Assessment Fees, including statutory late payment charges.¹
- The South Dakota Public Service Commission on February 28, 2007, revoked ATI's Certificate of Authority to provide interexchange telecommunications services in South Dakota² for failure to submit an annual report and pay the gross receipts tax.³
- The Oregon Public Utility Commission (OPUC) canceled ATI's certificate of authority to provide interexchange switched (toll) and dedicated transmission telecommunications service in Oregon⁴ on August 2, 2005, because ATI failed to file its 2004 annual report.⁵ The OPUC rescinded the order on August 30, 2005.⁶ On June 22, 2009, the OPUC canceled ATI's authority again, because ATI failed to file its 2008 annual report and failed

¹ *In re: Compliance investigation of IXC registration holders for apparent first-time violation of Section 364.336, F.S.*, Docket No. 060466-TI, PSC-06-0615-PAA-TIY (July 20, 2006) and PSC-06-0701-CO-TI (Aug. 15, 2006), 2006 Fla. PUC LEXIS 448.

² *In the Matter of the Application of Advanced Tel, Inc. dba ATI for a Certificate of Authority to Provide Interexchange Telecommunications Services in South Dakota*, Dec. 14, 2005, 2005 S.D. PUC LEXIS 330.

³ *In The Matter of Advanced Tel, Inc. dba ATI's Failure to Pay the Gross Receipts*, Feb. 28, 2007, 2007 S.D. PUC LEXIS 54.

⁴ *In the Matter of Advanced Tel Inc. Application for a Certificate of Authority to Provide Telecommunications Service in Oregon and Classification as a Competitive Provider*, Sept. 15, 2004, 2004 Ore. PUC LEXIS 445.

⁵ *In the Matter of the Cancellation of the Certificate of Authority Held by Advanced Tel, Inc.*, Aug. 10, 2005, Order No. 05-905, 2005 Ore. PUC LEXIS 379.

⁶ *In the Matter of Advanced Tel, Inc. Application for a Certificate of Authority to Provide Telecommunications Service in Oregon and Classification as a Competitive Provider*, Aug. 30, 2005, Order No. 05-967, see order at <http://apps.puc.state.or.us/edockets/docket.asp?DocketID=11560>.

to submit the minimum \$100 revenue fee and associated late payment penalties for 2008.⁷ The OPUC rescinded this order on October 5, 2009, as well after cautioning ATI, in the future, to comply with the OPUC's rules and regulations.⁸ Finally, ATI's certificate of authority was canceled on February 8, 2010, because ATI failed to comply with Oregon's Universal Service Fund requirements for the 3rd quarter of 2009.⁹

Under Rule 1.1, any person who transacts business with the Commission agrees to not "...mislead the Commission or its staff by an artifice or false statement of fact or law." In the application, Singer attested that "[n]either applicant, any of its affiliates, officers, directors, partners, agents, or owners...(e) had a telecommunications license or operating authority denied, suspended, revoked...(g) been found to have violated any statute, law, or rule pertaining to public utilities or other regulated industries..." However, as discussed above, Singer did have telecommunications licenses revoked and has violated rules pertaining to public utilities. Therefore, by responding "True" to Question 8 of the application form, Applicant made a false statement and misled the Commission, in violation of Rule 1.1.

⁷ *In the Matter of the Cancellation of the Certificate of Authority Held by Advanced Tel, Inc.*, June 22, 2009, Order No. 09-243, 2009 Ore. PUC LEXIS 191.

⁸ *In the Matter of Advanced Tel, Inc. Application for a Certificate of Authority to Provide Telecommunications Service in Oregon and Classification as a Competitive Provider*, Oct. 5, 2009, Order No. 09-400, 2009 Ore. PUC LEXIS 338.

⁹ *In the Matter of the Cancellation of the Certificate of Authority Held by Advanced Tel, Inc.*, Feb. 8, 2010, Order No. 10-043, 2010 Ore. PUC LEXIS 39.

3.2. Fitness of Officer

In addition to the above-listed undisclosed regulatory histories, CPSD uncovered additional regulatory actions that stemmed from the time Singer managed ATI.

- On October 5, 2011, the Tennessee Regulatory Authority opened a docket to investigate ATI for failing to secure and provide a bond or letter of credit since August 11, 2009, in compliance with Tenn. Code Ann. § 65-4-125(j) and for failing to pay the required inspection fees.¹⁰
- The Washington Utilities and Transportation Commission canceled the telecommunications provider registration of ATI on February 2, 2010,¹¹ (reaffirming this decision on March 5, 2010)¹² for failure to pay regulatory fees and/or failure to file its 2008 annual report.
- The Federal Communications Commission (FCC) adopted a Consent Decree on May 4, 2012, entered between the FCC's Enforcement Bureau and InterMetro to resolve an investigation into the unauthorized transfer of control of ATI to InterMetro. In the Consent Decree, InterMetro agreed to make a voluntary contribution of \$6,000 to the United States Treasury. InterMetro also agreed to implement a comprehensive Compliance Plan to ensure compliance with relevant regulatory statutes, rules and FCC orders.¹³

¹⁰ *In re: Show Cause Proceeding Against Advanced Tel, Inc. for Alleged Violations of Tenn. Code Ann. § 65-4-125(j) and Tenn. Code Ann. § 65-4-301(a)(1)*, Oct. 5, 2011, Docket No. 10-00208, 2011 Tenn. PUC LEXIS 164.

¹¹ *Washington Utilities and Transportation Commission, Complainant v. Advanced Tel, Inc., et al., Respondents*, Feb. 2, 2010, Docket UT-091666, 2010 Wash. UTC LEXIS 84.

¹² *Washington Utilities and Transportation Commission, Complainant v. Advanced Tel, Inc., et al., Respondents*, Mar. 5, 2010, Docket UT-091666, 2010 Wash. UTC LEXIS 181.

¹³ *In the Matter of InterMetro Communications, Inc.*, May 4, 2012, 2012 FCC LEXIS 1940.

- The Public Service Commission of the State of Nebraska on August 24, 2010, revoked the Certificates of Public Convenience and Necessity issued to ATI to provide telecommunications service for failing to file its 2009 annual report.¹⁴

Even though these decisions were rendered after Singer left ATI, the regulatory issues occurred during his watch.

CPSD's protest concluded that considering the numerous investigations and regulatory issues that arose while Singer managed ATI, CPSD questioned the fitness of Telco's sole officer to operate in California. These failures to comply with state commission and Federal Communications Commission regulations were pervasive when Singer operated ATI, and raise serious doubts on his ability to manage and operate Telco in accordance with this Commission's rules and regulations. In response to CPSD's investigation seeking additional information on Telco's Application, Telco stated that Singer was ATI's president after InterMetro's acquisition, but he had no control over any financial decisions.

On September 11, 2012, CPSD had a conference call with Singer. Mr. Singer stated that Telco had inadvertently made a mistake in the application and had no intention of misleading the Commission. Mr. Singer explained that although he held the title of president of ATI, he had no control over the financial decisions of the company once it was transferred to InterMetro. Mr. Singer expressed regrets for the oversights in the application, apologized for not disclosing the regulatory actions

¹⁴ *In the Matter of the Nebraska Public Service Commission regarding the 2009 Annual Report*, Aug. 24, 2010, 2010 Neb. PUC LEXIS 264.

CPSD uncovered, and expressed willingness to rectify and resolve the issues of the protest. Mr. Singer further stated that Telco is a new company with limited capital, reserved to commence the business stated in the application. Telco agreed to file an amended application addressing the issues raised in CPSD's protest. On November 26, 2012, Telco filed an amendment to its application, rectifying the prior misstatements.

4. Proposed Settlement

The Settlement Agreement (attached as Attachment A hereto) has been negotiated by the Parties; they believe it resolves all of the issues in CPSD's protest in the Settlement. Telco acknowledges that under the Commission's Rules of Practice and Procedure, any person who transacts business with the Commission agrees to not "...mislead the Commission or its staff by an artifice or false statement of fact or law" and that Telco failed to properly and fully advise the Commission of the issues stated above. Telco regrets that it failed to properly and fully advise the Commission of the issues stated above, and it has attempted to respond rapidly to correct the issues raised in CPSD's protest. Telco states that it will fully meet its regulatory and legal obligations and its responsibilities to its customers and members of the public in California. Telco agrees to make a payment of \$6,500 to the State's General Fund and file an amended application (which it has done). Telco agrees that any future application made by Telco, its current owners, directors, and/or officers will reference this settlement.

The standard of review for settlement agreements is set forth in Rule 12.1(d), which states as follows:

The Commission will not approve settlements, whether contested or uncontested, unless the settlement is reasonable in light of the whole record, consistent with law, and in the public interest.

The proponents of a settlement have the burden of demonstrating that the settlement satisfied Rule 12.1(d).

We find that the proposed settlement is not reasonable and is not in the public interest. The record clearly shows that Singer and the telephone companies that he was an officer of have failed to meet the standards of the telecommunications regulators in the States of Florida, South Dakota, Oregon, Tennessee, Washington, and Nebraska, as well as the FCC; all since 2005. Mr. Singer's explanation that although he held the title of president of ATI, he had no control over the financial decisions of the company once it was transferred to InterMetro, has a hollow ring. Even if true, it doesn't explain the lack of knowledge of the revoked certificates, and the fines, and the investigations, all of which should have been noted on his answer to Question 8 in his Application for Registration License. This was not inadvertence; nor is it so minor that an apology and the payment of a \$6,500 fine will rectify a deliberate misleading of the Commission.

5. Comments on Proposed Decision

The proposed decision of Administrative Law Judge (ALJ) Barnett in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. The Safety and Enforcement Division (SED)¹⁵ and Telco filed comments asserting that the proposed decision (PD) was incorrect. Both parties argue that the PD is inconsistent with recent Commission decisions approving similar settlements, and appears to be a departure from the

¹⁵ Formerly, the Consumer Protection and Safety Division (CPSD).

Commission's policy of opening the telecommunications market to competition. If, however, the Commission decides to reject the settlement, then SED requests clarification in the decision as to the meaning of a "dismissal" of the application.

First, our rejection of the settlement has no connection with our policy regarding competition in the telecommunications market. When considering a Rule 1.1 violation we should not have a more lenient standard merely because an applicant is in the telecommunications business; our obligation to protect the public is not lessened.

Both SED and Telco argue that the PD is inconsistent with other settlements of Rule 1.1 violations in the telecommunications industry. As Rule 12.5 of our Rules of Practice and Procedure expressly provides, adoption of a settlement "does not constitute approval of, or precedent regarding, any principle or issue in the proceeding or in any future proceeding." Thus our consideration of the settlement is not a departure from precedent. We have the discretion to exercise our expertise in the regulation of utilities to fashion a remedy for Rule 1.1 violations. There is no formula for determining "fitness." Each case stands or falls on individual facts. In this case a senior officer of a telecommunications company knowingly answered falsely to a central question in an application for regulatory authority. In our opinion a fine and an apology does not cleanse the offense.

Regarding the meaning of "dismissal" of the application, it means we reject the application; we deny the application. We will not grant authority to an applicant we find unfit. The applicant may reapply when he can show rehabilitation.

Telco's comments discuss and distinguish past settlements that were either approved or rejected. We need not do our own review because, as we have said,

past settlements are not precedent. Finally, Telco argues that the PD cites no evidence and provides no rationale for the conclusions that Telco's failure to disclose prior violations "has a hollow ring" and was "not inadvertence." To the contrary, the evidence shows that a chief executive officer of a telecommunications company knew that the regulators in six states plus the FCC had found his company in violation of their regulations. The officer might say his failure to report it was "inadvertent," but we are not obligated to believe him.

6. Assignment of Proceeding

Catherine J.K. Sandoval is the assigned Commissioner and Robert Barnett is the assigned ALJ in this proceeding.

Findings of Fact

1. Telco Connection, LLC (Telco or Applicant) is a California limited liability company incorporated on November 12, 2010. Applicant's sole officer, David A. Singer (Singer), was the founder and Chief Executive Officer of Advanced Tel, Inc., dba ATI (ATI), from March 1991 to August 2009. ATI is a California company incorporated on August 17, 1995. ATI has been a registered telephone carrier in California since January 3, 2002.

2. On March 31, 2006, Singer transferred 100% ownership interest in ATI to InterMetro Communications, Inc. (InterMetro), at which time ATI became a wholly-owned subsidiary of InterMetro, with Singer remaining president of ATI.

3. Applicant used the streamlined registration process provided for in D.10-09-017. In filling out the Application for Registration License form, Telco responded "True" to Question 8 that states:

Neither applicant, any of its affiliates, officers, directors, partners, agents, or owners (directly or indirectly) of more than 10% of applicant, or anyone acting in a management capacity for applicant:
(a) held one of these positions with a company that filed for

bankruptcy; (b) been personally found liable, or held one of these positions with a company that has been found liable, for fraud, dishonesty, failure to disclose, or misrepresentations to consumers or others; (c) been convicted of a felony; (d) been (to his/her knowledge) the subject of a criminal referral by judge or public agency; (e) had a telecommunications license or operating authority denied, suspended, revoked, or limited in any jurisdiction; (f) personally entered into a settlement, or held one of these positions with a company that has entered into settlement of criminal or civil claims involving violations of sections 17000 et seq., 17200 et seq., or 17500 et seq. of the California Business & Professions Code, or of any other statute, regulation, or decisional law relating to fraud, dishonesty, failure to disclose, or misrepresentations to consumers or others; (g) been found to have violated any statute, law, or rule pertaining to public utilities or other regulated industries; or (h) entered into any settlement agreements or made any voluntary payments or agreed to any other type of monetary forfeitures in resolution of any action by any regulatory body, agency, or attorney general.

4. In the Telco application, Singer attested that “[n]either applicant, any of its affiliates, officers, directors, partners, agents, or owners...(e) had a telecommunications license or operating authority denied, suspended, revoked...(g) been found to have violated any statute, law, or rule pertaining to public utilities or other regulated industries....”

5. Singer was Chief Executive Officer of ATI which had its telecommunications licenses revoked in several states and has violated rules pertaining to public utilities.

6. Singer and the telephone companies that he has been an officer of have failed to meet the standards of the telecommunications regulators in the States of Florida, South Dakota, Oregon, Tennessee, Washington, and Nebraska, as well as the FCC, all since 2005.

7. By responding "True" to Question 8 of the application form, Applicant made a false statement and misled the Commission, in violation of Rule 1.1.

8. The proposed settlement is not reasonable and is not in the public interest.

Conclusions of Law

1. Under Rule 1.1, any person who transacts business with the Commission agrees to not "...mislead the Commission or its staff by an artifice or false statement of fact or law."

2. Applicant has misled the Commission by a false statement of fact.

3. The proposed settlement should be rejected and the application dismissed.

O R D E R

IT IS ORDERED that:

1. The proposed settlement is rejected and Application 12-07-015 is dismissed.
2. Application 12-07-015 is closed.

This order is effective today.

Dated _____, at San Francisco, California.